

**Committee on Energy and Commerce  
Subcommittee on Oversight and Investigations**

**Hearing on  
“In the Dark: Lack of Transparency in the Live Event Ticketing Industry”**

**February 26, 2020**

**Mr. Donald Vaccaro, Co-Founder & Chief Executive Officer, TicketNetwork**

**The Honorable Diana DeGette (D-CO)**

1. Your written testimony stated that “[i]t is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC ....” Please detail the process by which you monitor your private-label clients’ compliance with the 2014 FTC consent decree.

*As stated in the initial written testimony, we would like to clarify that in using the term “white label sites” in the above cited quotation, we are using the term “white label site” to apply to a concept that is widely accepted in many industries. That meaning is “a third party owned event ticketing website using TicketNetwork’s exchange platform under that third party’s own private brand which allows clients who own those websites to market to different segments of consumers, provide additional services and otherwise fairly compete with one another all under their own privately branded website” rather than the meaning the Committee had given the term “white label websites” in its letter of November 21, 2019 which was “any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists.” We make this distinction because we believe we do not do business with “white label websites” based on the definition of “white label website” in the Committee’s letter of November 21, 2019 because we have processes to prevent relationships with those kinds of white label websites (which we consider “fake websites”).*

*We perform periodic audits of our clients’ private label websites to ensure compliance with the 2014 FTC consent decree. Private label website account managers work regularly with private label website clients, reviewing their websites for compliance with the consent decree disclosure requirements and requiring modifications to any area that does not meet these requirements.*

*Please also note that contrary to the representations made by AXS’ CEO Bryan Perez at the Committee Hearing of February 26, 2020 it is our understanding that AXS offers white label websites (as shown on Attachment 1 taken from a Wikipedia page) including but not limited to [toyotacenter.com](http://toyotacenter.com) which sells tickets for events in Houston, Texas.*

*An important concept of the FTC consent decree was fair advertising. We have maintained compliance with the consent decree and practiced fair advertising even as others in the market have used advertising tactics that have not necessarily been fair. For example, both Ticketmaster and AXS distribute their ticket inventory to websites such as bandsintown.com and eventful.com; for example, the consumer selects tickets on bandsintown and then is redirected from bandsintown to Ticketmaster, so the consumer ultimately purchases from the Ticketmaster website rather than the original website they visited. Please see Attachment 2 included with these responses for materials discussing or displaying these distribution relationships.*

*It should also be noted that at the FTC workshop “Online Event Tickets Workshop – An FTC Workshop about Online Ticket Sales” on June 12, 2019 Jeff Poirer, who is StubHub’s GM of Music and Theatre according to LinkedIn, stated that one of the contributing factors to their high fees is increased marketing costs caused by competition, he stated, “We have spent and seen prices for paid search advertising go up to incredibly high rates over the past few years in large part due to some of the bad actors out there that are pumping up keyword bids to adequately – basically, compete in the marketplace” leading us to believe they do not like fair competition for online advertising because it is costly to them and they would benefit from having fewer ticket selling websites in the market because those websites drive up StubHub’s costs of online advertising.*

2. What types of competitive advantages do brokers have and how do they unfairly disadvantage average consumers?

*It is our view that, as industry insiders, ticket brokers may have information and access to resources not available to average consumers, including details about the myriad of presales available to those on certain venue mailing lists or holding certain credit cards. Some ticket brokers may: (a) know that the primary market ticket sellers regularly hold back tickets to create artificial demand and they know how to monitor the timing of when these tickets are released into the market, allowing the broker to purchase those tickets while the general public believes the event has sold out and before the general public becomes widely aware of the sale of such additional tickets (b) have relationships with venues, teams, or concert promoters and are directly involved in the sale process in an unofficial capacity (c) serve as consignment portals for season ticket holders who prefer to avoid the hassle of understanding the market to sell tickets they cannot use (d) be sophisticated enough to use historical sales data to anticipate price fluctuations and (e) provide resources for ticket holders to sell tickets (that would have otherwise gone unused or sold far below what the consumer paid) for a fair price.*

*We believe the only potential way this advanced knowledge of the ticketing industry possessed by experienced brokers can unfairly disadvantage consumers is that as a result of ticket brokers’ activities fewer tickets are sold to consumers at what is considered “face value”. However, this disadvantage is outweighed by the benefits ticket brokers bring to the industry. Without ticket brokers, a single source provider (the primary seller) would be able to control all access to the marketplace, set price floors and could restrict consumers*

*from transferring a ticket they cannot use thus suffering a financial loss. Additionally, ticket brokers invest in entertainment events in a variety of ways which subsidizes the cost to event producers through corporate sponsorships, investing in Broadway shows and other forms of entertainment, and providing liquidity to promoters through pre-purchasing tickets in blocks to many entertainment events. They also create awareness for those entertainment events through advertising which reduces the risk of loss to event producers. Unfortunately, it seems many venues, teams, promoters and artists do not publicize these ticket broker investments and their relationships with ticket brokers because of fear of repercussions from primary market ticket sellers.*

### **The Honorable Brett Guthrie (R-KY)**

1. As you know, the Better Online Ticket Sales Act (BOTS Act) was signed into law in 2016. Are bots still a challenge in the live event ticketing industry? If so, please explain.

*Yes, it is still a challenge. The use of bots to rapidly purchase event tickets is detrimental, allowing users to manipulate demand and drive up prices significantly. However, we do not believe the practice is as rampant as the public perceives it to be. We can say that it is reasonable to assume that we list tickets originally purchased from Ticketmaster and AXS because of their position in the market. As of today, neither Ticketmaster nor AXS has communicated to us that any of the tickets sold on our exchange were obtained using bots.*

- a. Would there be a benefit to the consumer if the FTC and states started to take enforcement actions under this statute? Why or why not?

*We believe enforcement actions under the BOTS Act would benefit consumers. Enforcement actions would show that there are consequences for any person using bots to evade limits on ticket purchasing which would deter the use of bots and help keep prices equitable. Enforcement action might also uncover that even if the use of bots is not rampant in the industry, certain ticket sellers may be using bots and may have taken measures to conceal this. For example, we have been told that Vivid Seats has a confidentiality policy which would likely prohibit disclosure of any business practices that support or encourage the use of bots, yet Vivid Seats lists tickets from an extremely large number of ticket brokers. Additionally, in the past Vivid Seats and StubHub listed tickets bought by ticket brokers who were accused of violating New York law by using bots to purchase large numbers of tickets on websites; the ticket brokers settled with the New York Attorney General regarding the matter in 2016 a press release about the settlement is available here: <https://ag.ny.gov/press-release/2017/ag-schneiderman-announces-419-million-settlements-six-companies-illegally>.. Enforcement actions would also likely show that despite the public perception, the use of bots is not rampant in the resale ticket market and is not the primary reason for scarcity of tickets; therefore enforcement would help consumers (who may be hesitant to buy tickets on the resale ticket market based on that mistaken belief) become more comfortable buying on the resale market.*

2. Your testimony notes that 99 percent of your sites currently offers an ‘all-in’ pricing option. Do those sites use ‘all-in’ pricing for every event for which it posts tickets?

*Yes, it is offered for every event, however on some websites all-in pricing is the default with no toggle required; on others, it is available as a toggle in the search filters on an event page.*

- a. When did your sites start offering an ‘all-in’ pricing option?

*We have had various iterations of all-in pricing available on the websites for several years. The current iteration where some websites show all-in pricing as an optional toggle feature and others show all-in pricing is the default display was made available in 2019. We made the decision to implement all-in pricing in part because Commissioner Rebecca Kelly Slaughter from the FTC, in her opening remarks for the FTC workshop “Online Event Tickets Workshop – An FTC Workshop about Online Ticket Sales” on June 12, 2019 issued a call to the ticketing industry to provide all-in pricing and suggested that if we did not provide all-in pricing the government should take action to create a law enforcement or regulatory solution. Unfortunately, we have not seen all ticket sellers implement all-in pricing, most notably Ticketmaster and AXS, yet to our knowledge the FTC has failed to take action to create a law enforcement or regulatory solution.*

- b. Your testimony notes that “[c]ustomers can select an option to see ticket listings including the ticket price and an estimate of all fees included at the maps or listing page.” When you say that customers can select an option, does that mean on these sites, the ‘all-in’ pricing feature is the default setting, or is it an optional toggle feature?

*It varies by website. For some websites all-in pricing is the default display on others it is an optional toggle feature. Please see Exhibit 4(1) of TicketNetwork’s response to the Committee’s letter of November 21, 2019 for a visual example of this feature.*

- c. Since the majority of the ticketing industry does not currently use ‘all-in’ pricing, how, if at all, does the use of ‘all-in’ pricing affect your sites that use it?

*Showing all-in pricing may discourage consumers who are comparison shopping from purchasing on that website and decrease website sales. This likely happens because websites that do not show all-in pricing appear to have a lower price. For example, if a consumer sees a ticket initially priced at \$100 with all-in pricing, but sees the same ticket initially priced at \$85 without all-in pricing, the consumer will likely purchase from the website without all-in pricing even if the eventual addition of the service fees mean the final price is more than \$100. If all event ticketing websites used the same pricing model, it would be easier for consumers to make a more accurate price comparison and all online ticket marketplaces would be on a level playing field for selling the tickets to the consumer. Additionally, we believe all-in pricing could be beneficial to ticket sellers because the customer satisfaction and*

*appreciation resulting from this transparency could generate high ratings and positive viral marketing.*

3. Your testimony notes that in 2019 you beta tested a website that displayed the face value of tickets to the end consumer and you plan to aggressively test that model in Q2 of 2020. Can you please explain this model, and how it is different than the current model used by your sites?

*The model we tested was based on showing the face value next to the website's price for the ticket so that the consumer would be able to quickly understand the amount of increased or decreased cost from the face value. However, as this information is not shared by the primary ticket marketplace, we cannot reliably provide the consumer with accurate information of the face value. The current model used by websites we own and operate (and used by all other secondary ticket exchanges and secondary ticket selling websites, to the best of our knowledge) does not show the face value. It should also be noted that the term "face value" is vague, it could mean the price printed on the ticket but that does not include additional fees charged even by the primary market seller, meaning the ticket price is not actually the amount paid by the original buyer. In our model we defined "face value" as the original amount paid for the ticket.*

4. Does your company or any of its affiliated websites sell dynamically priced tickets?

*We understand "dynamically priced" to mean prices adjusted based on various factors including popularity, purchase patterns, demographic information or other data using supply machine learning and purchase pattern dynamic pricing algorithms. Websites we own or operate do not sell dynamically priced tickets.*

- a. What percentage of overall sales does dynamically priced tickets represent?

*None of the websites we own or operate sell dynamically priced tickets.*

- b. Does your company or any of its affiliated websites make disclosures to consumers when a ticket is dynamically priced, and what that means? If so, what does that look like?

*None of the websites we own or operate sell dynamically priced tickets.*

5. Your testimony discusses coordinated "floor pricing," artificial limits on ticket availability, and gender discriminatory pricing. Can you explain what you mean by each of those practices and the impact these practices have on consumers?

*In our view, Floor Pricing means setting a minimum price below which a ticket cannot be sold. This is generally at the behest of the original seller (event organizer, venue, etc.) who does not wish to see tickets sold at a true market value if that true market value is below*

*the price of their remaining unsold inventory. This negatively impacts both parties to the ticket resale transaction: resellers may struggle to sell their tickets because a price floor doesn't allow them to price to where a consumer would buy; and consumers are required to pay artificially higher prices because the price floor does not allow true competition with the original ticket seller.*

*The negative impact of floor pricing on consumers buying event tickets was demonstrated when, in 2016, the New York State Attorney General started an investigation into whether the National Football League's ticket pricing practices, including putting a price floor on tickets sold on the league websites, violated antitrust laws. Later that year, the NFL agreed not to push its teams to set minimum ticket prices on online ticket exchanges as part of a settlement with attorneys general from Florida, Massachusetts, New York, Ohio, Pennsylvania and the District of Columbia. A copy of the Settlement Agreement is available at [https://ag.ny.gov/sites/default/files/11.15.2016\\_-\\_nfl\\_tix\\_investigation\\_final.pdf](https://ag.ny.gov/sites/default/files/11.15.2016_-_nfl_tix_investigation_final.pdf)*

*Our belief is that floor pricing is or should be illegal. While we do not use floor pricing, we noticed that at the FTC workshop "Online Event Tickets Workshop – An FTC Workshop about Online Ticket Sales" on June 12, 2019 an FTC attorney asked representatives of Seat Geek, Ticketmaster and StubHub if they use floor pricing and they acknowledged that they do.*

*Artificial Limits on Ticket Availability – Event organizers frequently set aside large blocks of tickets that are not made available to the general public at the initial general sale. Many of these are for presale offerings where fan clubs, venue clients, season ticket holders, credit card partners, media partners and others are given special access to large blocks of tickets prior to such tickets being offered for general sale. Even once that process is complete, the sale to the general public often does not include all of the remaining ticket inventory. Entire rows and even sections of a venue may be hidden from the first general sale, only displayed after the row or section in front is sold through, creating an illusion of scarcity. This can extend for weeks, as additional blocks of seats are made available for previously "sold out" shows to consumers who missed their chance on the first day of sale. This process harms consumers by tricking them into believing that there is far lower supply than in reality, causing them to purchase at a higher price than if they were able to see how much of a venue was still available, or that the "sold out" show was actuality far from sold out.*

*Gender Discriminatory Pricing – In some instances, ticket prices differ based on the gender of the individual purchasing the ticket. For example, a nightclub/dance event might charge male patrons a higher ticket price— sometimes substantially more —than a female patron for a ticket to the same event. Beyond the simple mathematical issue of one gender paying more than another for the same product, there is a universe of gender identity and expression issues involved in such practices which lead to unequal treatment based on gender.*

*This pricing based on gender is discriminatory and violates certain state laws including California's Gender Tax Repeal Act of 1995 and Vermont's Public Accommodations Act.*

6. Does your company monitor its websites or affiliate websites for speculative tickets?

*We understand the term “speculative ticket” to mean a ticket that is listed for sale where the individual or company listing it does not own it, nor do they have any right to obtain it at the time it is listed.*

*We do not believe that there is an effective way to monitor for speculative tickets, but any failure by any ticket broker to deliver timely any tickets that have been purchased (whether such failure results from speculative tickets, technical failure, or broker negligence or fraud) on our site will result in financial penalties to the ticket broker through reimbursing the consumer 100% of the purchase price, a potential increase in the fee the broker pays for using TicketNetwork’s services, and in some circumstances a refund to the customer for any documented out of pocket costs for travel or accommodations. We may also remove their event tickets from the TicketNetwork exchange in some instances. If an event organizer contacts us indicating that they believe a listing contains speculative tickets, we investigate their claim, and remove the listing if we find the claim to be valid. In general, on our exchange very few consumers do not receive the tickets they ordered.*

*Notwithstanding the general difficulty involved in monitoring for speculative tickets, we try to be as helpful to the consumer as we can, and we comply with laws. For example, in accordance with New York law, for the few ticket sellers who have established a reputation with us where we permit them to list tickets which they do not have in hand and may not have a written contract to obtain, we disclose the fact that the tickets may be speculative as defined by New York law and require that the consumer acknowledge that they have read that disclosure prior to purchase.*

*It is worth noting that certain tickets listed for sale by primary sellers and promoters are arguably speculative tickets. For example, tickets to the fraudulent Fyre Festival of 2017, Ultra Music Fest in Miami and the Super Bowl in Dallas, Texas in 2011.*

*On our exchange, very few consumers do not receive the tickets they ordered; and as a remedy for consumer dissatisfaction for not receiving their tickets, secondary market exchanges were in full agreement at a 2018 closed door meeting at New York Governor Cuomo’s office to guarantee a 200% refund on undelivered tickets. Although all the secondary market exchanges would agree to such a policy, none of the primary market companies would agree to this. We believe requiring a 200% refund would address failure to deliver speculative tickets.*

- a. What actions does your company take if it finds or is made aware of a speculative ticket being listed?

*If we are made aware of factors that could indicate that tickets listed are speculative, we investigate and remove the listing if we reasonably believe the tickets are speculative tickets or are likely to be speculative tickets.*

7. Your testimony notes that “identifying speculative inventory is very difficult to do, as the definition is inherently vague, and inflated price is the only indicator of a potentially speculative ticket.” Why do you believe that the definition of a speculative ticket is vague and how would you define a speculative ticket?

*The term “speculative ticket” could have more than one meaning. The various meanings contemplated by states that have passed legislation or are contemplating proposed legislation exemplifies this. Among the various definitions are the following: a ticket the person listing does not have ready to deliver to the buyer upon listing it, a ticket the person listing does not have ready to deliver to the buyer upon listing and which the seller has no reasonable expectation of obtaining, a ticket the person listing does not have ready to deliver to the buyer upon listing and which the seller has no contract to obtain, a ticket the person listing does not have ready to deliver to the buyer upon listing and which the seller has no contract or other agreement to obtain.*

*We define a speculative ticket as a ticket offered for sale though the seller has no reasonable expectation of obtaining the ticket.*

8. Your testimony notes that “[o]ne way to identify brokers with intentions of not providing tickets as advertised, the ultimate concern relating to speculative tickets, is to offer consumers a mandatory 200% refund for cancelled ticket orders applicable to both primary and secondary markets.” Does your company or its affiliates offer a 200 percent refund for canceled ticket orders?

*We do not, currently, offer a 200% refund, as that is not industry standard.*

*Although we do not offer a 200% refund we have found that requiring the 100% refund, penalizing the broker with financial penalties, removing their event tickets from the TicketNetwork exchange and/ or, if applicable, requiring that the broker reimburse the consumer for any documented out of pocket costs incurred for event accommodations and travel serves as a deterrent.*

- a. If not, what is your company’s refund policy?

*If the tickets originally ordered are not available for any reason, customers are offered comparable or better tickets to the same event at no additional cost. If no such alternative options are available, the customer receives a refund of 100% of their purchase price (or their payment method is not charged, depending on the stage in the transaction the issue arises).*

9. How many white-label websites does your company own, operate, or affiliate with?



*As described above, we do not own, operate or affiliate with white label sites as that term is defined by the Committee in its letter of November 21, 2019 which was “any platform and/or website that make any representation of affiliation or endorsement to a venue, team, or artist, when in fact no formal affiliation or representation exists.”*

a. Your testimony notes that in 2014, TicketNetwork entered a consent decree with the Federal Trade Commission (FTC), that among other things, outlines clear and concise rules for conduct of operation of a white label website that is not deceptive and is designed to simply refer to a venue or an artist without becoming a website that is tricking consumers. Your testimony states that “[i]t is our view that all white label sites that TicketNetwork operates conduct business well within the guidelines set out by the FTC and are NOT “fake” label websites.” How does TicketNetwork know this?

*We know this based on the following:*

- (1) All websites have the FTC consent decree required disclaimers on each event’s ticketing page at the top of the page (this wording is controlled by TicketNetwork so this can not be removed), and on the checkout page prior to the user completing their purchase in each case it is clearly stated that the website is a resale marketplace or that the website is a reseller and that prices may be above face value. The portion of each page containing the required disclosures is controlled in full by TicketNetwork and cannot be altered by white label website owners, save for having the styling match the branding of the website.*
- (2) All private label website owners must sign a contract. The contract includes a policy which prohibits the private label site owner from doing any of the following: (i) Using the word “official” in search engine advertisements, actual or display URLs, websites, webpages, or any other forms of advertising. (ii) Using the name of any venue, stadium, arena, theater, performing arts center, center, event, tour, performer, or sports team in URLS in search engine advertisements except the name may appear after the top-level domain. If the ad clearly indicates the site is a ticket reseller and not affiliated with the venue or entity, the name may appear anywhere in the URL, including the sub domain and the domain name.(iii) Using the name of any venue, stadium, arena, theater, performing arts center, center, event, tour, performer, or sports team in search engine advertisements, websites, webpages, or any other content which would lead a reasonable consumer to believe that the webpage or website is owned or maintained by a venue, primary seller, or original ticket issuer. (iv) Using photos, images, depictions or illustrations of venues, stadiums, arenas, theaters, performing arts centers, centers, events, tours, performers, or sports teams in a way that makes it seem like the webpage is the event's primary page unless the private label website owner has proper licensing to use such photos,*

*images, depictions or illustrations. (v) Removing the disclosure on the ticket listing pages and checkout pages which states: "We are a resale marketplace, not the ticket seller. Prices are set by third-party sellers and may be above face value." and (vi) Using search engine advertising for a niche site, unless the website's initial landing page advertisement clearly and conspicuously makes the disclosure that the site is a resale marketplace, not the ticket seller, and prices may be below or above face value. If the private label website owner engages in any of the behaviors listed in this paragraph, we take disciplinary action which may include contract termination.*

*(3) We perform periodic audits of private label websites to confirm compliance with the 2014 FTC consent decree.*

*(4) Private label website account managers work regularly with private label website clients, reviewing their websites for compliance with the consent decree disclosure requirements and requiring modifications to any area that does not meet these requirements. In our contract language we encourage private label website owners to inform us if they believe another private label website owner is engaging in any of the prohibited behaviors.*

- i. Does it audit or review its white-label websites to ensure that they are in compliance with the FTC guidelines?

*We do not own or operate white label sites as that term is defined by the Committee. To ensure compliance with the FTC guidelines, private label websites are reviewed periodically by TicketNetwork staff. If we notice that something does not comply with our contract with the private label website owner, or if a customer complaint raises a compliance issue, we contact the private label website owner to make sure the noncompliance is addressed in a timely manner.*

- b. Your testimony notes that 70 out of 2000 complaints that you reviewed were caused by false and deceptive advertisements; 897 complaints were due to hidden, deceptive and exorbitant fees; and 749 of the complaints were for high or excessive fees. In addition to complying with FTC's guidelines to address false and deceptive advertisements, is TicketNetwork doing anything to address the other areas of complaint on its white label sites?

*For clarity those were the first 2,000 complaints lodged by consumers to the FTC for the ticketing industry in general, of those 70 complaints referenced here is the breakdown of which company is the subject of the complaint to the extent we could identify the company: Ticketmaster – 4 and Stub Hub – 1; we were also able to identify event promoters - 50 and venues 1 time.*

*As previously stated, we do not own or operate white label sites as that term is defined by the Committee. In order to address complaints related to hidden, deceptive and exorbitant fees; and high or excessive fees all of our sites provide a disclosure of fees prior to the consumer entering payment information. Additionally, we constantly seek to improve products and practices. Any complaints received are noted, discussed internally and used to guide best practices that we develop as we and the ticketing industry evolve. Our goal is to alleviate consumer confusion or issues and provide best-in-class service to our private label website owners, ticket brokers, and consumers.*